

REMARKS

The Examiner's objections to the claims. In so far as the language in these claims have been incorporated into claim 1 are respectfully traversed. In support of this traverse applicant has revised the language objected to by the Examiner along the lines suggested by the Examiner. Accordingly applicant submits that these objections are now rendered moot.

By the present amendment, applicant has added the subject matter of claims 3-9 to claim 1

The Examiner's rejection of claims 1-9 under 35 U.S.C. § 103 (a) for being unpatentable over Utterberg et al. WO 90/03196, as this rejection may be attempted to be applied to the amended claims, is respectfully traversed.

In support of this traverse, Applicant points out the following.

The Examiner states that: modifying the position of the endcap of Utterberg to the position of the pan would have been obvious to one skilled in the art during the time of the invention in order to avoid the need for extra elements and in order to permit ease of use.

Then the examiner states that it would be obvious to one skilled in the art during the time of the invention to modify the elements to increase the efficacy of determining the lateral movement and maintaining the placement of the wings and also to increase of manufacturing the apparatus by including all functioning elements on one side.

Further she states that modifying the position of the endcap of Utterberg to the position of the pan would have been obvious to one skilled in the art during the time of the invention in order to avoid the need for extra elements and in order to permit ease of use.

Still further she states that upon modifying the position of the endcap of Utterberg with the position of the pan it would have been obvious to one skilled in the art during the time of the invention to include frontal protrusions (130 and 132) in order to act as a further barrier against blood leaking.

Later she states that it would be obvious to one skilled in the art during the time of the invention that the distance between the ends 107 and 108 correspond with the distance between steps 131 and 133 since 107 and 108 or 131 and 133 are parallel to each other and on two separate ends when the protective element is in use.

Finally she states that since the purpose of the notches is to keep the wings in place when the protective element is in use, it would be obvious to one skilled in the art that if the notches were on the same side this measurement could take would be equal to the distance that exists, when then the protective element (3) is in use.

Applicant submits that all these assertions by the Examiner are pure conjecture not soundly based on any evidence. See Ex parte Leavell, 212 USPQ 763 where Mr. Williamowsky speaking for the Patent and Trademark Board of Appeals stated:

"The legal conclusion of obviousness must be bottomed on a solid evidentiary base."

The Examiner has not cited any evidence to support her assertions of obviousness.

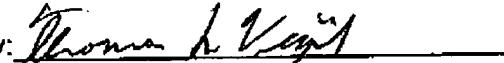
Only applicant teaches and claims these features which are disclosed in the subject application which features the Examiner contends are obvious to one skilled in the art at the time of the invention. However there is no teaching, suggestion, motivation direction, or incentive in Utterberg to modify his GUARDED WINGED NEEDLE ASSEMBLY to somehow come up with applicant's claimed end-of-use protective element (3).

In summary, for the reasons set forth above applicant submits that applicant's end-of-use protective element (3) as now claimed even more clearly in amended claim 1 is not obvious from the Utterberg reference cited and that the claims 1 and 2 are not only clear of the art of record herein but are also in condition for allowance. An early and favorable action to that end is requested.

Respectfully submitted,

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